

## **REMARKS**

### **I. Claims 12 and 14-20**

In the March 22<sup>nd</sup> Office Action, the Examiner maintained his obviousness rejection of independent Claim 12 and its dependent Claims 14-20 based on the combination of Peabody et al., U.S. Patent No. 5,643,201 (Peabody), and Hagen, U.S. Patent No. 4,059,169 (Hagen).

In the section of the Office Action entitled "Response to Arguments," the Examiner wrote:

Applicant recognizes that Peabody describes a "continuous" process, though Applicant feels that Peabody does not describe a true "continuous" process. Applicant has not explicitly defined "continuous" in his specification, so the term is given its broadest reasonable interpretation. Peabody has a portion of the process where fluid flows continuously through a subject's cavity. Claim 12 is given its broadest reasonable interpretation that at some point in the process fluid continuously flows through a patient. Applicant has not sufficiently distinguished his method of claim 12 from the prior art. Applicant should more clearly recite what he means by "continuously flowing" in the claim.

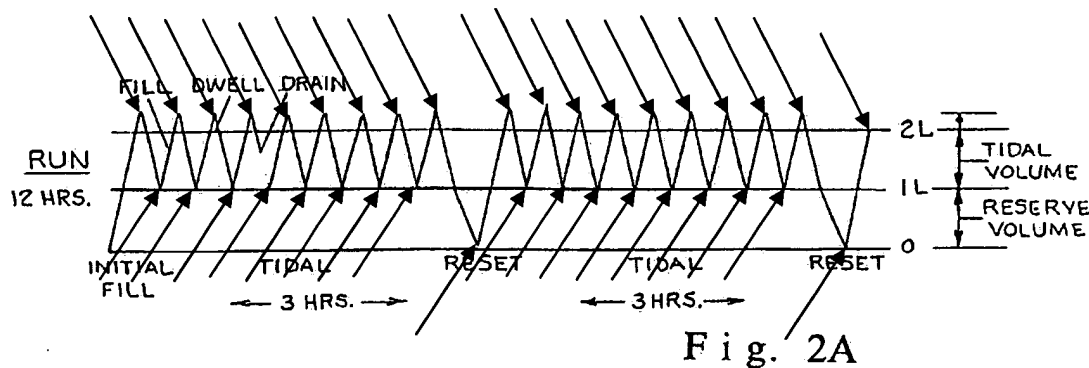
Applicants' Claim 12 calls for "continuously flowing dialysis fluid through a subject's peritoneal cavity." Webster's defines "continuous" as:

**con·tin·u·ous** (kən-tin'ū-əs), *adj.* [L. *continuus*; see CONTINUE], going on or extending without interruption or break; unbroken; connected. –*SYN.* see continual.

Webster's New World Dictionary, College Edition, The World Publishing Company, Cleveland, Ohio, 1964, p. 320. (Exhibit A attached hereto)

In a preferred embodiment of applicants' invention, peritoneal dialysis is performed overnight in just such a continuous, i.e., uninterrupted, manner. See page 12, line 19, to page 13, line 11, of applicants' specification.

Applicants respectfully submit that Peabody's system, rather than "going on or extending without interruption or break," actually is repeatedly interrupted each time Peabody stops the flow of dialysis fluid through the patient's peritoneal cavity to reverse the direction of fluid flow. In the Amendment filed on January 6, 2005, applicants reproduced a copy of Peabody's Figure 2A. The following is another copy of that figure, but with arrows added to show each time Peabody stops the flow of dialysis fluid through the subject's peritoneal cavity.



At each of these arrows, Peabody "interrupts" his flow as he reverses the direction of flow. Such reversals are essential to Peabody's "tidal" procedure for performing peritoneal dialysis. As such, Peabody's approach is very different from the method called for by applicant's Claim 12 in which dialysis fluid must "continuously" flow through the peritoneal cavity, i.e., in applicants' method, there must be an uninterrupted flow of dialysis fluid through the peritoneal cavity, not a flow in, followed by a flow out, followed by a flow in, etc., as in Peabody.

To further emphasize this feature of applicants' claimed invention, dependent Claims 17 and 19 have been amended to specifically recite that the continuous flow of dialysis fluid must take place for at least three hours in the case of Claim 17, or six hours in the case of Claim 19.

As to the Hagen patent, in the "Response to Arguments," the Examiner asserts that "Hagen teaches the use of bioimpedance measurements to readily indicate fluid

changes of biologic volumes." However, Hagen makes no mention of the use of bioimpedance in peritoneal dialysis. Nor, for that matter, does Peabody, which was filed years after Hagen issued.

Moreover, the Rallison et al. article, by its title alone, i.e., "Errors in Estimating Peritoneal Fluid by Bioelectric Impedance Analysis and Total Body Electrical Conductivity," teaches away from the use of bioimpedance measurements in peritoneal dialysis. The Examiner's bald assertion that Rallison et al.'s position is only that of some workers in the art is pure speculation. Rallison et al. are clearly very negative with regard to the use of bioimpedance in peritoneal dialysis and the Examiner has not provided any reason to believe that other workers in the art had a different view at the time the present invention was made.

To provide further protection for their invention, applicants are adding an additional dependent Claim 40 which specifies that the bioimpedance measurement of step (B) of Claim 12 employs measuring electrodes located in the subject's loin and buttock regions. Support for this claim can be found in Example 3 which describes the improved performance achieved with this location of measuring electrodes. The Peabody and Hagen references cited by the Examiner clearly do not disclose or suggest such a location for measuring electrodes.

## **II. Claims 37-39**

With regard to Claims 37-39, the Examiner stated that these claims have been interpreted "to read on a computer that is capable of performing [the equations referenced in the claims] because the specific step equations are not explicitly recited in the claims. Since all computers have the capability to have these equations programmed in, the claims read on any computer."

By the above amendments, Claims 37-39 have been amended to change the phrase "a programmed computer for performing" a specified step to "a computer which has been programmed to perform" the step. With this change, these claims no longer read on "any computer", but only on a computer which has undergone the specified programming.

Applicants believe that this change overcomes the Examiner's objection to Claims 37-39.

**III. Conclusion**

In view of the foregoing, applicants believe that this application is now in condition for allowance. Accordingly, reconsideration and the issuance of a Notice of Allowance for the application are respectfully requested.

Respectfully submitted,

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